



CLOSED CASE SUMMARY

ISSUED DATE: JULY 4, 2022

FROM: INTERIM DIRECTOR GRÁINNE PERKINS
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2022OPA-0042

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	8.200 - Using Force 1. Use of Force: When Authorized	Allegation Removed
# 2	8.200 - Using Force 4. Use of Deadly Force	Not Sustained - Management Action

This Closed Case Summary (CCS) represents the opinion of the OPA Director regarding the misconduct alleged and therefore sections are written in the first person.

EXECUTIVE SUMMARY:

OPA alleged that Named Employee #1 (NE#1) may have used unauthorized force and improperly used deadly force during an officer-involved shooting on January 5, 2022.

ADMINISTRATIVE NOTE:

The Office of Inspector General (OIG) certified this investigation as timely and objective but did not certify the investigation as thorough. The sole reason OIG offered for not certifying the investigation as thorough was that OPA declined to conduct an additional investigation into an allegation that NE#1 deactivated his BWV while sitting in a police vehicle about thirty-six minutes after the shooting ended, but before permission to deactivate was given by the FIT Captain. See SPD Policy 16.090-POL-1(5)(b). OPA appreciates OIG recognizing this issue and shares its concerns but disagrees with OIG’s thoroughness assessment for the reasons set forth below.

As noted by OIG: “The NE’s BWV is broken into two parts. At the end of the first video, a representative from SPOG arrives, while the officer is sitting in an SPD vehicle, and tells the NE to turn off his BWV and the NE complies.” NE#1’s BWV was deactivated for shorter than two minutes (approximately from timestamp 22:58:35 through 22:59:52).

OPA declined to open a separate investigation into this alleged policy violation for two reasons. First, at the time OIG alerted OPA to this issue, it was no longer feasible to conclude an investigation into this allegation before the expiration of the 180-day period in which discipline could result under the SPOG CBA. See SPG CBA Section 3.6(B). OPA recognizes its failure to recognize this potential misconduct earlier. While fully acknowledging its shortcoming, OPA notes three contributing factors: (1) this case was investigated during a period of critical understaffing and high leadership turnover at OPA, which diminished the agency’s ability to fully evaluate peripheral evidence; (2) although OIG correctly noted that the BWV deactivation was “discussed in the FIT investigation report,” OPA does not believe this issue was explicitly referred for investigation until OIG raised the matter on June 30, 2022; and (3) the accountability system was deprived of time to recognize and evaluate this issue because, as OIG stated, “SPOG refused



to toll the investigation despite the unavailability of the Named Employee while on leave for approximately two months. This substantially decreased the amount of time OPA was given to investigate this case.”

Second, although OPA is not prohibited from investigating an incident where the 180-day period may have expired, *see* SPOG CBA Section 3.6(D), OPA judged that it was unlikely an investigation into this allegation would produce information sufficiently valuable for the public interest to warrant a full investigation at this late date. NE#1 deactivated his BWV for shorter than two minutes while sitting inside a police vehicle about thirty-six minutes after the shooting had concluded. During this time, NE#1 was presumably conferring with his SPOG representative. OIG did “not dispute” the officer had a “right to confer privately with a SPOG representative” but questioned the propriety of NE#1 “deactivat[ing] his BWV while still at an active scene and before FIT authorize[d] officers to do so.”

The events leading up to the shooting and the shooting itself—the original reasons for viewing the video—were captured on BWV. On review of all the circumstances raised by OIG’s June 30, 2022 memorandum, OPA judged that the most reasonable course of action was to classify OIG’s allegation for Supervisor Action and refer it to the Named Employee and SPOG Representative’s respective chains of command. *See* SPD Policy 16.090-POL-2(4) (“Minor Misconduct Discovered During ICV and BWV Review Will Not Result in Discipline”).

OPA notes that this was ultimately the only issue OIG cited in declining to certify this investigation as “thorough.” OPA agrees that it should have evaluated this conduct earlier as a separate allegation of misconduct. But OPA respectfully disagrees that its investigation into the use of deadly force was not thorough.

SUMMARY OF INVESTIGATION:

This investigation concerned the fatal shooting of the Subject by NE#1. In this investigation, OPA evaluated whether NE#1’s use of deadly force was within SPD policy.

A. 911 Calls and Search for the Subject

On January 5, 2022, at about 2:11 p.m., a community member (Community Member #1 or CM#1) called 911 to report that an “intruder” was inside his house, threatening CM#1 with a machete. The “intruder” was the Subject in this fatal shooting investigation. The 911 recorders captured the sounds of banging and yelling, and CM#1 stopped responding to the call taker. The call taker broadcast a “possible struggle” inside the house and that contact had been lost.

B. Foot Pursuit

NE#1 and a K9 Officer (K9 Officer) responded to the scene and were the first to arrive. NE#1 explained that he drove to the scene with lights and sirens because CM#1 “could be getting killed by the person with the machete.”

Upon arrival, NE#1 and K9 Officer encountered CM#1 outside his home holding a sledgehammer. CM#1 indicated that the Subject was still inside the home and “almost dead.” At this juncture, K9 Officer returned to his SPD vehicle to deploy with his police dog (the Police Dog). A third officer then arrived. When asked if he knew the Subject, CM#1 stated to the third officer and NE#1 “No fucking idea. He was taking a shower, and my whole house was destroyed.”

K9 Officer then returned with the Police Dog on a six-foot lead and went to the back of the house. The Police Dog was a tracking dog and the K9 Officer wanted to search for indications of the Subject. In the back yard, K9 Officer observed



a shattered window and sliding door. While K9 Officer was in the back yard, NE#1 and two other officers searched the house. NE#1 described the condition of the home as “ransacked or damaged” with “a bunch of broken glass on the floor.” NE#1 encountered two rooms inside the house with locked doors.

While the officers were searching the house, In-Car Video (ICV) showed that the Subject had exited the home and was walking down the street. ICV showed the Subject wearing only a towel and carrying several items in his hands. Shortly thereafter, ICV showed another community member (Community Member #2 or CM#2) following the Subject and carrying a baseball bat.

At this time, a sergeant (Witness Supervisor #1 or WS#1) arrived and observed the Subject wearing only a towel and carrying “a collection of different items, including a pole.” WS#1 reported over the radio that there was a disturbance that might involve the Subject of the residential burglary. WS#1 broadcast the description of the Subject and that the Subject was being pursued by someone with a baseball bat. WS#1 used his radio to ask other officers to relocate.

K9 Officer then exited CM#1’s house with the Police Dog still on a six-foot lead. K9 Officer relocated to WS#1’s location. There, K9 Officer observed CM#2 “with the baseball bat” and, later, saw the Subject moving down the street carrying items such as a “broomstick, some, like Swifter thing or something in his left arm, and in his right arm, he has a, uh, I can clear as day see a machete.” After the Subject stopped and looked in the direction of K9 Officer, K9 Officer ordered the Subject to “get on the ground now!” The Subject then ran away and K9 Officer pursued, yelling, “Stop! Get on the ground! I’ll send the dog!” WS#1 drove his police vehicle behind K9 Officer.

The Subject then approached another house, walking towards the front door. As the Subject neared the stairway leading to the front door, K9 officer again told the Subject to stop. The Subject did not enter this house. Instead the Subject walked through the yard towards a roadway. WS#1 pulled ahead of the Subject and stopped his vehicle in the roadway, perhaps fifteen to twenty feet ahead of the Subject.¹ WS#1 exited his vehicle.

As the Subject and WS#1 neared one another, the Subject walked around WS#1 and towards the other side of the roadway. The Subject raised his machete and K9 Officer yelled “Sarge, he’s got a fucking machete!” WS#1 backed away and drew his firearm. WS#1 yelled “Stop right there! Stop! You want to take him? Stop it now! Stay back! Stay back!” K9 Officer ordered the Subject to “Drop it!”

The Subject kept his machete raised and moved around WS#1, entering the bicycle lane at the edge of the roadway. WS#1 went over the radio to request additional units set up containment, advising “We got one running with a machete.” K9 Officer and WS#1 continued to give the Subject orders. The Subject then stopped, turned toward the officers, pointed the machete at them, and yelled “Get away from me!” Both K9 Officer and WS#1 pointed their firearms at the Subject.

K9 Officer then told WS#1 “Sarge, I can’t fucking send him [the Police Dog].” WS#1 then asked K9 Officer “What do you want to do?” K9 Officer responded, “I’m gonna send the dog. He’s gonna get fucking shot though.”

C. Incident and Fatal Shooting

NE#1 then drove down the roadway, passing the Subject, K9 Officer, and WS#1. NE#1 explained in his FIT interview:

¹ OPA estimated the distances in this memorandum are estimated from BWV.



And I drove up, caught up, passed them. And then I parked the patrol car to block traffic, and maybe, uh, put some, some kind of barrier in the way so the suspect, uh, couldn't go any further. But to just, pretty much stayed in the one lane to block the traffic, um, to keep us a, a safe place to work.

NE#1 stopped his police vehicle perhaps thirty-five to fifty feet away from the Subject, explaining to FIT that his plan was to wait behind his vehicle as a "barrier" to create time and distance. NE#1 stopped his vehicle in the alternate lane of traffic for the direction he was driving, stopping traffic traveling in the direction of the Subject. At least two non-police vehicles stopped behind NE#1's vehicle.

As NE#1 was exiting his vehicle, the Subject continued moving down the roadway in the direction of NE#1 and the non-police vehicles. K9 Officer then said, "That's it, fuck it." K9 Officer announced, "Dog, dog, dog!" and released the Police Dog. K9 Officer gave the Police Dog the command, "Take 'em! Take 'em!"

As the Police Dog approached the Subject, the Subject looked over his shoulder, then starting to run away from the Police Dog. The Subject then turned, back pedaled, then struck the Police Dog with the machete. K9 Officer attempted, unsuccessfully, to call the Police Dog back to him. The Subject struck the Police Dog again with the machete. K9 Officer again commanded the Police Dog to release the Subject. K9 Officer also attempted to use a shock collar command to get the Police Dog to release the Subject. Neither command was effective.

As the Police Dog continued to engage the Subject, the Subject fell backward over a guardrail along the side of the roadway, but remained propped in a sitting position due to a chain-link fence on the other side of the guardrail. The Subject hit the Police Dog a third time with the machete.

NE#1 told FIT that, after exiting his vehicle, he saw K9 Officer release the Police Dog and the Subject hit the Police Dog with the machete. NE#1 drew his firearm and approached the Subject as K9 Officer and WS#1 also approached the Subject. K9 Officer explained to FIT "I moved in and as I started to move in, because the [Subject] actually kind of fell against the fence, and I couldn't see anything in his hands, I needed to go in and start the arrest procedures."

While sitting on the guardrail, the Subject then switched the machete from his right hand into his left hand. The Subject then switched a knife—which he had been holding in his left hand—into his right hand. The Subject stabbed the Police Dog two times: once in the dorsal neck, once in the left lateral thorax.

NE#1 told FIT: "And then a knife was produced, and he stabbed the dog. Um, I as going to fire at that point, uh, to prevent him from continuing to stab the dog, but then I saw, uh, [K9 Officer] out of the corner of my eye start to move in. And I didn't want to fire if [K9 Officer] was getting any closer to the [Subject] at that point."

K9 Officer was the closest officer to the Subject. As K9 Officer approached the Subject, the Subject looked at K9 Officer and lunged at him from a distance of about three or four feet. The Subject struck K9 Officer in the face with the tip of a metal fence post, which was held in the Subject's left hand. With his right hand, the Subject stabbed at K9 Officer's midsection. The Police Dog blocked the Subject's motion towards K9 Officer, causing the Subject to fall to the ground.

NE#1 discharged his firearm at the Subject seven times, striking the Subject six times. NE#1 told FIT: "I saw the swipe from the [Subject] at [K9 Officer], um, and I know I had to protect [K9 Officer] so that he would not be injured. So



that’s when I fired.” NE#1 told FIT he continued to fire as the Subject moved forward toward K9 Officer and only stopped firing after the Subject stopped moving.

NE#1 fired seven shots within about 2 seconds at the following timestamps of his BWV:

- **14:22:28:** Subject stabbing at K9 Officer with knife in hand
- **14:22:28:** First shot – Subject falling between K9 Officer and WS#1, holding knife in right hand
- **14:22:29:** Second, third, and fourth shots – Subject on ground, holding knife in right hand
- **14:22:29:** Fifth, sixth, and seventh shot – Subject on ground, holding knife in right hand

WS#1 then broadcast that shots were fired, an officer was “partially injured,” the Subject was down, and requested medics. The Subject and the Police Dog died on scene.

D. FIT Investigation

After the shooting, personnel from FIT, OPA, and OIG responded to the scene. Once FIT arrived, they took jurisdiction over the investigation. FIT worked with CSI to document and collect evidence and to conduct a round count of NE#1’s firearm to determine how many shots were fired. WS#1 performed a walkthrough during which he identified where he, K9 Officer, NE#1, the Police Dog, and the Subject were located at the time of the shooting.

Later that day, FIT interviewed NE#1, K9 Officer, and WS#1. FIT also interviewed community members and firefighters as witnesses.

FIT completed its investigation and the FIT sergeant, lieutenant, and captain all completed reviews of the incident and of the thoroughness and completeness of FIT’s investigation.

E. FRB Review

After the FIT investigation concluded, the case was reviewed by the FRB. As discussed above, because OPA had an open investigation at the time, FRB was not permitted to reach ultimate conclusions on the force allegation. However, FRB was permitted to and did consider all involved officers’ tactics and decision-making.

FRB found that all involved officers’ tactics and decision making was consistent with both policy and training.

F. OPA Investigation

During its investigation, OPA reviewed the public complaints it received (logged under 2022OPA-0016), the CAD call Report, Incident Report and Supplements, BWV, and ICV. OPA also reviewed the contents of the FIT investigation, including the interviews conducted. OPA was present for the FRB’s deliberations on this case and considered FRB’s conclusions as part of its analysis. Finally, OPA interviewed NE#1.

OPA conducted an interview of NE#1. NE#1 has worked for SPD for more than sixteen years and has been assigned to patrol for his entire tenure.



NE#1 provided OPA a statement concerning the incident. NE#1 stated that he responded to a burglary call that involved a machete. NE#1 recalled that the Subject was seen fleeing the scene with the machete and other items in his hands and that the K9 Officer and other officer gave chase. NE#1 recalled that it sounded like the Subject was fighting with a second community member based on the report of a disturbance after the burglary call.

NE#1 stated that he took a patrol vehicle and parked it ahead of the Subject in order to create a “safe space to work.” NE#1 elaborated that blocking traffic prevented others from getting close enough to the Subject that he could hurt them. NE#1 described this as containment, which he defined as not allowing the Subject to roam free and have additional access to possible victims. NE#1 stated that the objective of containment was to allow police to resolve the situation in a safe and effective manner. NE#1 described the street where he encountered the Subject as one of the main thoroughfares in the area. NE#1 recalled that there were cars stopped on the street near his car and houses behind him.

NE#1 recalled that, as he exited his vehicle, he observed the K9 Officer release the Police Dog, and that the Police Dog contacted the Subject. NE#1 said that the Subject then struck the Police Dog with the machete and stabbed the Police Dog multiple times. NE#1 stated that, as the K9 Officer approached the Subject, the Subject lunged at the K9 Officer with a knife. Based on his observation of the Subject hitting the Police Dog with a machete and stabbing the Police Dog multiple times, NE#1 stated his belief that the Subject was trying to kill the K9 Officer. NE#1 stated that he shot the Subject multiple times as the Subject lunged at the K9 Officer.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

8.200 - Using Force 1. Use of Force: When Authorized

OPA alleged that NE#1 may have used unauthorized force against the Subject.

SPD Policy 8.200(1) requires that force used by officers be reasonable, necessary and proportional. Officers shall only use “objectively reasonable force, proportional to the threat or urgency of the situation, when necessary, to achieve a law-enforcement objective.” Whether force is reasonable depends “on the totality of the circumstances” known to the officers at the time of the force and must be balanced against “the rights of the subject, in light of the circumstances surrounding the event.” (SPD Policy 8.050.) The policy lists a number of factors that should be weighed when evaluating reasonableness. (See id.) Force is necessary where “no reasonably effective alternative to the use of force appeared to exist” and “the amount of force used was reasonable to effect the lawful purpose intended.” (Id.) Lastly, the force used must be proportional to the threat posed to the officer. (Id.)

The only force that NE#1 used against the Subject was deadly force—discharging his firearm seven times. Accordingly, this allegation and its analysis is duplicative of Allegation #2. OPA is removing this allegation.

Recommended Finding: **Allegation Removed**

Named Employee #1 - Allegation #2

8.200 - Using Force 4. Use of Deadly Force

OPA alleged that NE#1 may have used unauthorized force.



SPD Policy 8.200-POL-4 governs the use of deadly force by SPD employees. It states that: “Deadly force may only be used in circumstances where threat of deadly or serious physical injury to the officer or others is imminent.” The policy defines an imminent danger as when an objectively reasonable officer believes that: (1) “A suspect is acting or threatening to cause death or serious physical injury to the officer or others”; (2) “The suspect has the means or instrumentalities to do so”; and (3) “The suspect has the opportunity and ability to use the means or instrumentalities to cause death or serious physical injury.” (SPD Policy 8.200-POL-4.) Deadly force must also be reasonable, necessary, and proportional as defined under SPD Policy 8.200-POL-1.

All three elements of SPD Policy 8.200-POL-4 were met when NE#1 shot the Subject. First, it was objectively reasonable for NE#1 to believe that the Subject was acting to cause death to the officers. NE#1 shot the Subject as he was lunging towards the K9 Officer. Moreover, NE#1 had just observed the Subject strike the Police Dog with a machete and then stab the Police Dog multiple times. When the Subject lunged at the K9 Officer, the Subject was about two to three feet away from the K9 Officer—close enough that a metal fence post the Subject was holding hit the K9 Officer in the face. Second, the Subject had the instrumentalities to cause death or serious injury to the officers because he was holding a knife in his right hand. Third, the Subject had the opportunity to use the knife because he was standing only a few feet from the officers. The Subject had the ability to use the knife to cause injury as swung the knife at the K9 Officer moments after using that same knife to stab the Police Dog twice.

For similar reasons, NE#1’s use of force was reasonable, necessary, and proportional. See SPD Policy 8.200-POL-1. SPD Policy 8.050 sets forth a non-inclusive list of factors to be considered when determining whether a use of force is reasonable. Here, the officers had clear probable cause to believe the Subject had committed a number of violent felonies against multiple individuals. The Subject had consistently disobeyed orders to stop and had demonstrated a willingness to use the weapons in his possession. The Subject also posed an immediate threat to the officers present and an imminent threat to community members nearby. Efforts to contain the Subject had repeatedly proved ineffective and the only reasonable non-lethal tool available to the officers—the Police Dog—had already been deployed and stabbed. Moreover, at the time NE#1 shot the Subject, the Subject was actively lunging at the K9 Officer with a knife—NE#1 had a very short amount of time available to make a decision. For these reasons the use of deadly force was objectively reasonable.

NE#1’s use of deadly force was also necessary. NE#1’s immediate lawful purpose was preventing the death of the K9 Officer. Other than his firearm, which he had already drawn, NE#1 had no other reasonable tools to deploy against the Subject at the time of the shooting.

Finally, NE#1’s use of deadly force was proportional as NE#1 shot the Subject to prevent the ongoing assault with a deadly weapon against the K9 Officer.

For the above reasons, OPA finds that NE#1’s use of deadly force was lawful and proper and within policy. However, two issues demand OPA’s further comment.

First, OPA recognizes the tragedy of this situation and the difficulty of confronting moving individuals with edged weapons. OPA has evaluated similar situations in the past and issued Management Action Recommendations to ensure that the Department is doing everything in its power to stop these incidents from taking place. See OPA Case Number 2020OPA-0519 (decided March 19, 2021) / 2021COMP-0039 (issued August 25, 2021). OPA is aware that the



Department's work on MAR 2021COMP-0039 remains ongoing and that training is being rolled out, but calls on the Department to complete this work with the greatest sense of urgency.

Second, in his FIT interview, NE#1—a veteran officer with over sixteen years of experience and an Adjunct Trainer to the Training Unit—stated that he almost shot the Subject to protect the Police Dog. In OPA's view, such a use of force would have been both outside of policy and illegal. FIT noted that "it appears there may be a widespread misunderstanding of law and SPD's position on the use of deadly force to protect a police K-9 that should be addressed." FRB agreed with FIT's recommendation that the Training Unit work with the K9 Unit to develop a training module on this this topic. OPA concurs and issues the following Management Action Recommendation.

- **Management Action:** SPD should provide department-wide guidance in the form of an eDirective to clarify that officers may only use deadly force in defense of other human beings. SPD should consider amending SPD Policy 8.200-POL-4 to clarify that the phrase "or others," where it is used, refers to human beings and not animals or property.

Recommended Finding: **Not Sustained - Management Action**